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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,048	12/01/2003	Malin E. Holcomb	100993.00005	2976
26710 7590 12/04/2008 QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497				
EXAMINER				
IDELL, JOSEPH T				
ART UNIT		PAPER NUMBER		
3636				
MAIL DATE		DELIVERY MODE		
12/04/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/725,048

**Applicant(s)**

HOLCOMB ET AL.

**Examiner**

JOSEPH F. EDELL

**Art Unit**

3636

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8, 10-13, 15-18 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8, 10-13, 15-18, and 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 5, 10, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,944,385 to Pearce.

Pearce discloses a seat back that includes all the limitations recited in claims 1, 5, 10, and 23. Pearce shows a seat back having a shell 100 (see Fig. 1a) that is rigid and curved, a back panel 110 with two lateral sides, a first wing 120 fastened in a first position to the back panel and projecting forward from one lateral side, a second wing 130 fastened in a second position to the back panel and projecting forward from the other lateral side, the first and second positions are adjustable to alter curvature of the shell, a cushion 810 (see Figs. 8a-8d) attached to the shell, a body (either each component 812,828,830 individually or the components together as a unitary member) of the shell which stretch and contracts to alteration of the curvature of the shell, a cover of the cushion (813 - see column 14, lines 59-61 and column 16, lines 41-49) that is made of stretchable material encasing the body and including an element 827 that attaches the cushion to the shell, and a fastener arrangement (Fig. 1c) to attach the shell to a wheelchair frame wherein the body is formed of a resilient foam material, the

fastener arrangement includes a plurality of fasteners each having a bracket 170 attached to the shell and a hook portion 180 for engaging the wheelchair frame, and the bracket having a slot 405 (see Fig. 4d) through which a threaded fastener 406 (see slit in fastener head) passes into the shell.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,257,664 B1 to Chew et al. in view of U.S. Patent No. 5,836,900 to Leventhal.

Chew et al. disclose a seat back that is basically the same as that recited in claims 12 and 17 except that the cushion lacks the specified cover, as recited in the claims. See Figures 1-5 of Chew et al. for the teaching that the seat back has a shell 15 that is rigid and curved, a back panel 20 of the shell, a central portion (about channel 56) of the shell with one side from which a first lateral panel projects in a forward direction (as in Fig. 2) and with another side from which a second lateral panel projects in the forward direction, a first wing 19 adjustably fastened in a first position to the first lateral side, a second wing 19 adjustably fastened in a second position to the second lateral side, a cushion attached to the shell with a conformable body of resilient foam

material (see column 3, lines 56- 59) and including a central section adjacent the central portion of the shell and first and second lateral sections extending from the central portion adjacent the first and second wings, a fastener arrangement 17 to attach the shell to a frame, a cover of the cushion (see column 4, lines 39-48), and a plurality of fasteners 26,32,34 of the fastener arrangement each adjustable along two axes and having a hook portion 34 for engaging the frame of a wheelchair.

Leventhal shows a seat back similar to that of Chew et al. wherein the seat back has a shell (see Fig. 6), a cushion 12, and a cover 14 of stretchable material encasing the body. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat back of Chew et al. such that the cover is made of stretchable material and encases the body, such as the seat back disclosed by Leventhal. One would have been motivated to make such a modification in view of the suggestion in Leventhal that the stretchable cover provides tensioned covering of the cushion to maintain the cushion components in folded/adjusted positions, and in view of knowledge generally available to one of ordinary skill in the art that knitted nylon covering material allows provides a smooth, clean appearance for encased, adjustable cushion components.

5. Claims 1, 5, 7, 8, 11, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chew et al. in view of Leventhal as applied to claims 12 and 17 above, and further in view of Pearce.

Chew et al., as modified, disclose a seat back that is basically the same as that recited in claims 1, 5, 7, 8, 11, and 23 except that the cover lacks a specified element

attaching the cushion to the shell, as recited in the claims. See Figures 5-12 of Chew et al. for the teaching that each of the plurality of fasteners has a bracket 26 attached to the shell, a hook portion 34' for engaging the wheelchair's frame, a slot 28' of the bracket through which a threaded fastener 29' passes into the shell. Pearce shows a seat back similar to that of Chew et al. wherein the seat back has a shell 100 (Fig. 1a), a cushion 810 (Fig. 8b), a cover (non-shown numeral 813), and an element 827 of the cover that attaches the cushion to the shell. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the seat back of Chew et al. such that the cover includes an element that attaches the cushion to the shell, such as the seat back disclosed by Pearce. One would have been motivated to make such a modification in view of the suggestion in Pearce that the cushion element attaches the cushion to the shell.

6. Claims 7, 8, 12, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearce in view of Chew et al.

Pearce discloses a seat back that is basically the same as that recited in claims 7, 8, 12, and 17 except that the back panel lacks first and second lateral panels projecting in a forward direction, as recited in the claims. See Figures 8a-8d of Pearce for the teaching that body of the cushion stretches and contracts conforming to alterations of shell's length of curvature. Chew et al. shows a seat back similar to that of Pearce wherein the seat back has a shell 15 (see Fig. 5), a back panel 20 of the shell, a central portion (about channel 56) of the shell with one side from which a first lateral panel projects in a forward direction (as in Fig. 2) and with another side from which a

second lateral panel projects in the forward direction, a first wing 19 adjustably fastened in a first position to the first lateral side, and a second wing 19 adjustably fastened in a second position to the second lateral side. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat back of Pearce such that the central portion of the back panel has a first lateral panel projecting in a forward direction and as a second lateral panel projecting in the forward direction, such as the back panel disclosed by Chew et al. One would have been motivated to make such a modification in view of the suggestion in Chew et al. that the forward extending lateral panels allow for a tight fit and for extra cushion for vertical protrusions.

7. Claims 2-4, 13, 15, 16, 18, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chew et al. in view of Leventhal as applied to claims 12 and 17 above, as well as over Chew et al., as modified, in view of Pearce as applied to claims 1, 5, 7, 8, 11, and 23 above, and further in view of U.S. Patent No. 5,370,444 to Stulik.

Chew et al., as modified, disclose a seat back that is basically the same as that recited in claims 2-4, 13, 15, 16, 18, and 20-22 except that the cushion lacks pleated first and second lateral sections, as recited in the claims. Stulik shows a seat back similar to that of Chew et al. wherein the cushion 10 (see Fig. 1) is attached to a shell 30,32 (see Fig. 2), a lateral section 12b,12c, and first and second surfaces of the body with first and second plurality of interleaving grooves 21 forming pleats. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the seat back of Chew et al. such that the cushion has a

first surface of the body with a first plurality of grooves extending vertically, a second surface of the body with a second plurality of grooves interleaved with the first grooves forming pleats enabling the body to stretch and conform with changes in the positions of the first and second wings wherein the first and second sections of the body stretch and contract with changes in positions of the first and second wings, such as the cushion disclosed in Stulik. One would have been motivated to make such a modification in view of the suggestion in Stulik that the cushion configuration allows for adjustability without requiring extensive cutting and sewing of parts. Moreover, *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740 (2007) set forth that "if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill."

8. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearce in view of Stulik.

Pearce discloses a seat back that is basically the same as that recited in claims 2-4 except that the cushion lacks pleated first and second lateral sections, as recited in the claims. Stulik shows a seat back similar to that of Pearce wherein the cushion 10 (see Fig. 1) is attached to a shell 30,32 (see Fig. 2), a lateral section 12b,12c, and first and second surfaces of the body with first and second plurality of interleaving grooves 21 forming pleats. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat back of Pearce such that the cushion has a first surface of the body with a first plurality of grooves extending



vertically, a second surface of the body with a second plurality of grooves interleaved with the first grooves forming pleats enabling the body to stretch and conform with changes in the positions of the first and second wings wherein the first and second sections of the body stretch and contract with changes in positions of the first and second wings, such as the cushion disclosed in Stulik. One would have been motivated to make such a modification in view of the suggestion in Stulik that the cushion configuration allows for adjustability without requiring extensive cutting and sewing of parts. Moreover, *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740 (2007) set forth that "if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill."

9. Claims 13, 15, 16, 18, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearce in view of Chew et al. as applied to claims 7, 8, 12, and 17 above, and further in view of Stulik.

Pearce, as modified, discloses a seat back that is basically the same as that recited in claims 13, 15, 16, 18, and 20-22 except that the cushion lacks pleated first and second lateral sections, as recited in the claims. Stulik shows a seat back similar to that of Pearce wherein the cushion 10 (see Fig. 1) is attached to a shell 30,32 (see Fig. 2), a lateral section 12b,12c, and first and second surfaces of the body with first and second plurality of interleaving grooves 21 forming pleats. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat back of Pearce such that the cushion has a first surface of the body

with a first plurality of grooves extending vertically, a second surface of the body with a second plurality of grooves interleaved with the first grooves forming pleats enabling the body to stretch and conform with changes in the positions of the first and second wings wherein the first and second sections of the body stretch and contract with changes in positions of the first and second wings, such as the cushion disclosed in Stulik. One would have been motivated to make such a modification in view of the suggestion in Stulik that the cushion configuration allows for adjustability without requiring extensive cutting and sewing of parts. Moreover, *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740 (2007) set forth that "if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill."

10. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chew et al., as modified, in view Pearce as applied to claims 1, 5, 7, 8, 11, and 23 above, and further in view of U.S. Patent No. 5,556,168 to Dinsmoor, III et al.

Chew et al., as modified, disclose a seat back that is basically the same as that recited in claim 11 except that the fastener arrangement lacks a threaded fastener passing through a bracket slot into a hook aperture, as recited in the claims. Dinsmoor III, et al. show a seat back similar to that of Chew et al. wherein the seat back has a shell 10 (see Fig. 1), a cushion 100, and a fastener arrangement 20 to attach the shell to a frame 5 of a wheelchair, a plurality of fasteners of the fastener arrangement that each includes a bracket 26 (see Fig. 6) attached to the shell and a hook portion 22

separate from the bracket, a slot 36b of the bracket, an aperture of the hook (to accommodate fastener), a threaded fastener 34b passing through the slot into the aperture. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the seat back of Chew et al. such that the bracket has a slot, the hook portion has an aperture and is separate from the bracket, and a threaded fastener passing through the slot and into the aperture, such as the seat back disclosed by Dinsmoor, III et al. One would have been motivated to make such a modification in view of the suggestion in Dinsmoor, III et al. that the bracket and hook configuration of the plurality of fasteners provides a conveniently adjustable fastener arrangement.

11. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pearce in view of Dinsmoor, III et al.

Pearce discloses a seat back that is basically the same as that recited in claim 11 except that the fastener arrangement lacks a threaded fastener passing through a bracket slot into a hook aperture, as recited in the claims. Dinsmoor III, et al. show a seat back similar to that of Pearce wherein the seat back has a shell 10 (see Fig. 1), a cushion 100, and a fastener arrangement 20 to attach the shell to a frame 5 of a wheelchair, a plurality of fasteners of the fastener arrangement that each includes a bracket 26 (see Fig. 6) attached to the shell and a hook portion 22 separate from the bracket, a slot 36b of the bracket, an aperture of the hook (to accommodate fastener), a threaded fastener 34b passing through the slot into the aperture. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was

made to further modify the seat back of Pearce such that the bracket has a slot, the hook portion has an aperture and is separate from the bracket, and a threaded fastener passing through the slot and into the aperture, such as the seat back disclosed by Dinsmoor, III et al. One would have been motivated to make such a modification in view of the suggestion in Dinsmoor, III et al. that the bracket and hook configuration of the plurality of fasteners provides a conveniently adjustable fastener arrangement.

### ***Response to Arguments***

12. Applicant's arguments with respect to claims 1-5, 7, 8, 10-13, 15-18, and 20-23 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Joseph F Edell/  
Primary Examiner, Art Unit 3636  
December 4, 2008